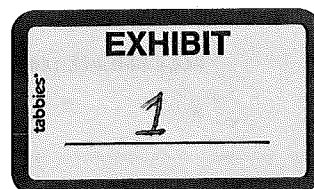


TRANSCRIPT OF PROCEEDINGS 5/8/2012 & 5/9/2012

<p style="text-align: right;">Page 1</p> <p>1 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</p> <p>2 St. Louis District Office</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 IN RE: CYNTHIA MOORE vs. DEPARTMENT OF JUSTICE</p> <p>8</p> <p>9 EEOC CASE NO. 560-2010-00168X</p> <p>10 AGENCY NO. OBD-2008-00632</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 TRANSCRIPT OF PROCEEDINGS</p> <p>16 MAY 8 & 9, 2012</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (Hearing start time: 8:10 a.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 TONJA NERO-BRITT</p> <p>2 Direct Examination by Mr. Garfield Page 223</p> <p>3 Cross Examination by Mr. Bridenhagen Page 237</p> <p>4 DANIEL CASAMATTA</p> <p>5 Direct Examination by Mr. Garfield Page 240</p> <p>6 Cross Examination by Mr. Bridenhagen Page 272</p> <p>7 Redirect Examination by Mr. Garfield Page 282</p> <p>8 Recross Examination by Mr. Bridenhagen Page 290</p> <p>9 Further Redirect Examination by Mr. Garfield Page 292</p> <p>10 NANCY GARGULA</p> <p>11 Direct Examination by Mr. Garfield Page 293</p> <p>12 Cross Examination by Mr. Bridenhagen Page 357</p> <p>13 Redirect Examination by Mr. Garfield Page 384</p> <p>14</p> <p>15</p> <p>16 (Day one is page 7 through page 237. Day two is page 238</p> <p>17 through page 393.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX OF WITNESSES</p> <p>2</p> <p>3 CYNTHIA MOORE</p> <p>4 Direct Examination by Mr. Garfield Page 9</p> <p>5 Cross Examination by Mr. Bridenhagen Page 72</p> <p>6 Redirect Examination by Mr. Garfield Page 77</p> <p>7 Rebuttal Direct Examination by Mr. Garfield Page 390</p> <p>8 CINDY BECK</p> <p>9 Direct Examination by Mr. Garfield Page 78</p> <p>10 Cross Examination by Mr. Bridenhagen Page 98</p> <p>11 Redirect Examination by Mr. Garfield Page 106</p> <p>12 Rebuttal Examination by Mr. Bridenhagen Page 142</p> <p>13 Rebuttal Examination by Mr. Garfield Page 145</p> <p>14 ROBERT NEWTON</p> <p>15 Direct Examination by Mr. Mr. Garfield Page 110</p> <p>16 Cross Examination by Mr. Bridenhagen Page 137</p> <p>17 Redirect Examination by Mr. Garfield Page 141</p> <p>18 MARTHA HALLOWELL</p> <p>19 Direct Examination by Mr. Bridenhagen Page 146</p> <p>20 Cross Examination by Mr. Garfield Page 159</p> <p>21 JOHN CHURCH</p> <p>22 Direct Examination by Mr. Bridenhagen Page 166</p> <p>23 Cross Examination by Mr. Garfield Page 196</p> <p>24 Redirect Examination by Mr. Bridenhagen Page 219</p> <p>25 Recross Examination by Mr. Garfield Page 221</p>	<p style="text-align: right;">Page 4</p> <p>1 EXHIBITS</p> <p>2</p> <p>3 Complainant's Exhibit C-3 Page 33</p> <p>4 Complainant's Exhibit C-6 Page 81</p> <p>5 Complainant's Exhibit C-8 Page 39</p> <p>6 Complainant's Exhibit C-9 Page 57</p> <p>7 Complainant's Exhibit C-16 Page 69</p> <p>8 Complainant's Exhibit C-20 Page 63</p> <p>9 Complainant's Exhibit C-21 Page 65</p> <p>10 Complainant's Exhibit C-22 Page 195</p> <p>11 Complainant's Exhibit C-25 Page 64</p> <p>12 Complainant's Exhibit C-26 Page 33</p> <p>13 Complainant's Exhibit C-27 Page 93</p> <p>14</p> <p>15 Agency Exhibit 4 Page 155</p> <p>16 Agency Exhibit 6 Page 100</p> <p>17 Agency Exhibit 7 Page 156</p> <p>18 Agency Exhibit 8 Page 121</p> <p>19 Agency Exhibit 9 Page 227</p> <p>20</p> <p>21 (All exhibits were retained by Judge Niehoff. The index</p> <p>22 below reflects Agency or Complainant exhibits that were</p> <p>23 identified during the proceeding).</p> <p>24</p> <p>25</p>

1 (Pages 1 to 4)



TRANSCRIPT OF PROCEEDINGS 5/8/2012 & 5/9/2012

<p style="text-align: right;">Page 109</p> <p>1 in field offices?</p> <p>2 JUDGE NIEHOFF: District offices.</p> <p>3 Q (By Mr. Garfield) Do you recall what the</p> <p>4 justification was for locating them in those --</p> <p>5 A Do I know what the justification was?</p> <p>6 Q Yeah.</p> <p>7 A No, I don't. That would have been something</p> <p>8 between -- a decision that would have been made between</p> <p>9 senior management in the program and the United States</p> <p>10 Trustee at the time.</p> <p>11 Q You would not have been --</p> <p>12 A No, I would not have been involved.</p> <p>13 Q That would be outside your bailiwick?</p> <p>14 A Right.</p> <p>15 MR. GARFIELD: Okay. That's it.</p> <p>16 JUDGE NIEHOFF: Can we excuse this witness?</p> <p>17 MR. BRIDENHAGEN: Excused.</p> <p>18 JUDGE NIEHOFF: I'm assuming she's going to be</p> <p>19 returning to D.C., so --</p> <p>20 THE WITNESS: Yes.</p> <p>21 JUDGE NIEHOFF: Is there any reason why you think</p> <p>22 we might need her?</p> <p>23 MR. GARFIELD: Only if I -- what if I bring</p> <p>24 something in that shows I submitted the exhibit.</p> <p>25 JUDGE NIEHOFF: Then you can submit the exhibit.</p>	<p style="text-align: right;">Page 111</p> <p>1 and Records Administration in Kansas City.</p> <p>2 Q What is your grade?</p> <p>3 A GS-14.</p> <p>4 Q And how long have you been in that position?</p> <p>5 A Been in that position now for fourteen months.</p> <p>6 Q I'm sorry. I didn't hear you.</p> <p>7 A Fourteen months.</p> <p>8 Q Fourteen months, okay. Would that be somewhere</p> <p>9 around February of 2011?</p> <p>10 A That's correct.</p> <p>11 Q Or thereabouts?</p> <p>12 JUDGE NIEHOFF: And what was your position in 2008</p> <p>13 and 2009?</p> <p>14 A 2008 and 2009 I was the Admin Officer for the U.S.</p> <p>15 Trustee Program in Kansas City.</p> <p>16 Q (By Mr. Garfield) And were you also Admin Officer</p> <p>17 for Region 12?</p> <p>18 A Yes.</p> <p>19 Q So you served two regions?</p> <p>20 A Region 12 and 13.</p> <p>21 Q And was who was your supervisor for Region 13?</p> <p>22 A Region 13 would be Nancy Gargula.</p> <p>23 Q And she was the U.S. Trustee for the region,</p> <p>24 right?</p> <p>25 A Yes, she was.</p>
<p style="text-align: right;">Page 110</p> <p>1 She's already testified regarding the question.</p> <p>2 MR. GARFIELD: Okay. All right.</p> <p>3 JUDGE NIEHOFF: Thank you.</p> <p>4 (Witness excused)</p> <p>5 JUDGE NIEHOFF: Who's next?</p> <p>6 MR. GARFIELD: Mr. Newton.</p> <p>7 JUDGE NIEHOFF: So it's 11:30 now. We can go off</p> <p>8 the record.</p> <p>9 (Whereupon there was a discussion off the record.)</p> <p>10 JUDGE NIEHOFF: Would the court reporter please</p> <p>11 swear in the witness.</p> <p>12 ROBERT NEWTON,</p> <p>13 of lawful age, being produced, sworn and examined on behalf</p> <p>14 of the Claimant, Cynthia Moore, states and says:</p> <p>15</p> <p>16 JUDGE NIEHOFF: Please state your name.</p> <p>17 THE WITNESS: Robert Newton.</p> <p>18 JUDGE NIEHOFF: And please state your race</p> <p>19 for the record.</p> <p>20 THE WITNESS: Caucasian.</p> <p>21 JUDGE NIEHOFF: Go ahead, Mr. Garfield.</p> <p>22 DIRECT EXAMINATION</p> <p>23 BY MR. GARFIELD:</p> <p>24 Q Mr. Newton, what's your current position?</p> <p>25 A I'm field support officer for the National Archives</p>	<p style="text-align: right;">Page 112</p> <p>1 Q And what was the grade of your position?</p> <p>2 A I was brought in as a GS-11 and when I was offered</p> <p>3 or given the second region, it was a temporary promotion to</p> <p>4 GS-12. It was renewed on an annual basis.</p> <p>5 Q And when you took the position with National</p> <p>6 Archives in Kansas City, was that originally as a fourteen or</p> <p>7 was it --</p> <p>8 A It was a GS-13 promotion, potential to fourteen and</p> <p>9 it was recently elevated to fourteen when I hit the one year</p> <p>10 time and grade as a thirteen.</p> <p>11 Q So what were your responsibilities when you were</p> <p>12 the regional administrative officer for Region 13?</p> <p>13 A When I was the Regional Administrative Officer I</p> <p>14 was in charge of Human Resource functions, finance, budget,</p> <p>15 facilities, safety, security. I was also a contracting</p> <p>16 officer for the U.S. Trustee Program.</p> <p>17 Q What were your responsibilities with regard --</p> <p>18 never mind.</p> <p>19 What was your responsibility with regard to</p> <p>20 recruitment actions?</p> <p>21 A Recruitment actions. If we had a local recruitment</p> <p>22 action within the region, I would coordinate with the Human</p> <p>23 Resource specialist that's assigned to our region and</p> <p>24 Executive Office in Washington, D.C. I would actually by</p> <p>25 direction of the U.S. Trustee put together the standard</p>

28 (Pages 109 to 112)

TRANSCRIPT OF PROCEEDINGS 5/8/2012 & 5/9/2012

<p style="text-align: right;">Page 137</p> <p>1 A Yes.</p> <p>2 Q And what was that situation?</p> <p>3 A Region 12 the senior analyst works in Cedar Rapids;</p> <p>4 the region office is in Minneapolis.</p> <p>5 MR. GARFIELD: No more questions.</p> <p>6 CROSS EXAMINATION</p> <p>7 BY MR. BRIDENHAGEN:</p> <p>8 Q Just a couple questions. You just testified that</p> <p>9 you had concerns that Nancy Gargula made decisions for awards</p> <p>10 based on race; is that correct?</p> <p>11 A No, I don't think she made the decisions based on</p> <p>12 race. I think she made the decisions on the overall amount</p> <p>13 of money that she had available and she took into effect what</p> <p>14 the performance rating was.</p> <p>15 Q Performance rating and what else?</p> <p>16 A Their performance rating, grade levels and their</p> <p>17 billet.</p> <p>18 Q Do you have any reason to believe that any</p> <p>19 decisions made by Paul Randolph concerning promotions and</p> <p>20 awards were in any way influenced by race?</p> <p>21 A No, I do not.</p> <p>22 Q And what race is Mr. Randolph?</p> <p>23 A He's African American.</p> <p>24 MR. BRIDENHAGEN: No further questions.</p> <p>25 JUDGE NIEHOFF: Anything else, Mr. Garfield?</p>	<p style="text-align: right;">Page 139</p> <p>1 concerned about?</p> <p>2 A When Miss Carpenter had come down to my office in</p> <p>3 the afternoon and we had had a conversation, that Miss</p> <p>4 Carpenter had asked some questions about the billet and</p> <p>5 future thoughts of the program and I believe that discussion</p> <p>6 did not stay in a good context and she went back to Miss</p> <p>7 Gargula on it.</p> <p>8 Q Did Miss Gargula reprimand you for discussing Miss</p> <p>9 Moore's EEO complaint with Miss Carpenter?</p> <p>10 A I was never reprimanded at any time.</p> <p>11 Q Did you she give you a verbal --</p> <p>12 A She did not.</p> <p>13 Q What was discussed about your discussion with Miss</p> <p>14 Moore?</p> <p>15 A She pointed --</p> <p>16 Q Concerning --</p> <p>17 A She told me not to discuss it with anyone.</p> <p>18 Q And had you discussed it with anyone?</p> <p>19 A No, I had not.</p> <p>20 Q And not with Miss Carpenter?</p> <p>21 A No, I had not.</p> <p>22 Q And did there come a point in time when you went in</p> <p>23 Miss Carpenter's office and apologized to her?</p> <p>24 A I did for upsetting her, but nothing further than</p> <p>25 that. The regional officer there, too, Mr. Bridenhagen, has</p>
<p style="text-align: right;">Page 138</p> <p>1 MR. GARFIELD: No. Are you done?</p> <p>2 MR. BRIDENHAGEN: Wait a minute. I'm sorry. Let</p> <p>3 me ask one more question.</p> <p>4 Q (By Mr. Bridenhagen) How did you get along with</p> <p>5 Miss Gargula?</p> <p>6 A The relationship with Miss Gargula was</p> <p>7 deteriorating to the point that I sought another position at</p> <p>8 the National Archives where I work now. My involvement in</p> <p>9 this case, my position, my performance evaluation was</p> <p>10 beginning to decline. So it was -- the way we discussed</p> <p>11 things quite at times became no discussion at all. It was</p> <p>12 her way; she would tell me what to do. So quite frankly it</p> <p>13 is -- I would -- I'm no longer at the U.S. Trustees Program</p> <p>14 because our relationship had declined to that point.</p> <p>15 Q Were you ever the subject of any disciplinary</p> <p>16 action?</p> <p>17 A No, I was not.</p> <p>18 Q Did Miss Gargula verbally reprimand you on one</p> <p>19 occasion?</p> <p>20 A On one occasion she called in the middle of the</p> <p>21 afternoon with Cindy Beck on the line and she talked to me</p> <p>22 about my communication and that's where it stayed.</p> <p>23 Q Your communication about what and with whom?</p> <p>24 A Communication with Miss Carpenter.</p> <p>25 Q And what communication was she particularly</p>	<p style="text-align: right;">Page 140</p> <p>1 a history of this kind of activity. So, you know, what I</p> <p>2 went through and what you're asking me specifically not only</p> <p>3 happened to me, but happened to several employees and it's</p> <p>4 still ongoing in the office. That's why I left.</p> <p>5 MR. BRIDENHAGEN: I don't have any further</p> <p>6 questions.</p> <p>7 JUDGE NIEHOFF: What did you say to Miss Carpenter?</p> <p>8 What was the discussion about?</p> <p>9 A Ma'am, she came down and asked a few questions.</p> <p>10 She was then the regional analyst, I was the regional admin</p> <p>11 officer. The regional office is located with the Kansas City</p> <p>12 office. We had a general discussion about some things that</p> <p>13 were in the office and I don't quite -- I don't quite</p> <p>14 remember the specific topic until later I was on the phone</p> <p>15 with Nancy and Cindy being told not to talk about any work</p> <p>16 related business with any of the other employees. So --</p> <p>17 JUDGE NIEHOFF: That's what they told you, don't</p> <p>18 talk about anything in the office with other employees?</p> <p>19 A That's correct.</p> <p>20 JUDGE NIEHOFF: Or did they specifically mention</p> <p>21 any names?</p> <p>22 A Very specific, ma'am. I was not to speak about any</p> <p>23 of the administrative business with any of the other</p> <p>24 employees other than Miss Gargula.</p> <p>25 JUDGE NIEHOFF: So no names were mentioned</p>

35 (Pages 137 to 140)